IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.1797 OF 2001

1) The State of Maharashtra)
through the Secretary, Irrigation)
Department, Mantralaya,)
Mumbai 400 032.)

2) Secretary)
General Administrative Department)
Mantralaya, Mumbai 400 032.).. PETITIONERS

VERSUS

1) S.S.Pakhare)
Chief Engineer)
Maharashtra Krishna Valley)
Development Corporation, Pune.)

2) M.S.Mundhe)
Chief Engineer and Managing Director)
Maharashtra Land Development)
Corporation, Pune.)

3) E.B.Patil)
Chief Engineer (Specifical Projects))
Maharashtra Krishna Valley)
Development Corporation, Pune.)

4) H.Y.Kolavale)
Superintending Engineer)
Quality Control Circle, Pune.)

5) D.P.Shirke)
Superintending Engineer)
Ghatghar Hydro Electric Project)
Circle, Nasik.)

6) Chairman)
Maharashtra Public Service)
Commission, having his office at)
Bank of India Building, Hutatma)
Chowk, Mumbai 400 023.)

7) P.B. Bhalerao)
Suprintending Engineer, Osmanabad)
Irrigation Circle, Osmanabad.)

8) M.J.Shinde)
Superintending Engineer)

Nanded Circle, Nanded.)

9) S.G.Koli)
Superintending Engineer)
I & W.R.I.C.C. Circle)
Central Building, Pune-1.)

10) C.M.Punde)
Superintending Engineer)
Beed Irrigation Project Circle)
Parli (W), Dist. Beed)
All C/o. Shri M.R.Patil.).. RESPONDENTS

Mr.S.R.Nargolkar, Assistant Government Pleader, for the Petitioners.

None present for the Respondents.

CORAM: V.G. PALSHIKAR AND SMT.NISHITA MHATRE, JJ.

DATED: 27TH JANUARY 2005

ORAL JUDGMENT : (PER PALSHIKAR, J.)

. By this Petition, the State of Maharashtra has challenged the order dated 27th April 2000 passed by the Maharashtra Administrative Tribunal deciding Original Application No.107 of 1999 and Original Application No.146 of 1999. Dispute before the Maharashtra Administrative Tribunal was raised by several Applicants who were entitled to promotions in the cadre of Executive Engineers. The Tribunal, after considering all the relevant Rules, came to the conclusion that certain directions are liable to be issued and, therefore, issued directions in paragraph 22. Paragraph 22 reads thus :

"22. We, therefore, direct modification of seniority lists in the light of our finding :

(1) Determine cadre strength for each year as required under rule 4(1) and cadre strength should include all posts, permanent and temporary (excluding the years for which it is already fixed and published).

(2) From 1970 to 1974, promotions to the post of Executive Engineers shall be in according with rule 4(2)."

(3) In 1974, the Government decided policy of reservation. Roster points in the cadre of Executive Engineers should be determined. As far as possible, promotions to roster points shall also follow rule 4(2), but if backward class officers are not available in Assistant Executive Engineer Class I and Frozen Deputy Engineers in vacancies meant for that cadre, backward class officers from other cadres may be promoted. Backward class officers promoted in such posts according to roster point shall count seniority on the basis of continuous service from the date of appointment. Their appointment will not be fortuitous.

(4) The respondents are competent to make promotions from other cadres as stop gap arrangement in vacancies of Executive Engineers meant for the cadre of Assistant Executive Engineer Class I, if officers with prescribed qualification i.e. experience of four years are not available. However, their appointments will be fortuitous till regular appointment in vacancy meant for their cadre and such fortuitous period shall be excluded for the purpose of seniority.

(5) Approval of the M.P.S.C. shall be obtained for select list of each year, wherever it is still pending or if select list needs revision on account of above guidelines.

(6) Impugned seniority lists to be finalised on the basis of principles enunciated above within a period of six months."

2. The State of Maharashtra, by this Petition, takes exception to the third direction issued by the Maharashtra Administrative Tribunal on the ground that such direction could not be issued in the face of Rule 4 of the Maharashtra Service of Engineers, Class I and Maharashtra Service of Engineers Class II (Regulation of seniority and preparation of revision of seniority lists) Rules, 1983, hereinafter referred to as "the Rules". The contention is that the third direction which requires certain promotions to be made from outside the cadre to which it is available and further direct that such appointments by promotion would not be considered as fortuitously appointed without taking into consideration the language of Rule 2(g) of the Rules. "Fortuitously appointed", as per the definition, means a person appointed in any vacancy which according to Rule 4 or Rule 12 is not allocated or assigned for the class of officers to which the person appointed in that vacancy belongs or is appointed in contravention of any recruitment rules.

3. Rule 4 provides for determination of cadre strength of Executive Engineers and promotion to that cadre. Clause (2) of that Rule provides for break-up of the vacancies and the manner in which they are to be filled. The recruitment by promotion under these Rules,

therefore, has to be as contemplated by Rule 4(1) and (2) of the Rules. The directions issued by the Tribunal, as quoted above, are in consonance with these Rules in so far as the first and second directions are concerned. The grievance which the State makes against the third direction is that it provides for appointment to a particular class to a particular vacancy of persons not belonging to that class or category or cadre. Even if this can be done, the promotions of such cadre from such category will have to be termed as fortuitous promotion as defined by Rule 2(g). A direction requiring that service can be treated as fortuitous is, therefore, a direction inconsistent with Rule 4 and Rule 2(g) of the Rules. The Tribunal, therefore, could not have issued such a direction. In our opinion, therefore, interest of justice would be met if the order of Maharashtra Administrative Tribunal dated 27th April 2000 is confirmed except the third direction which is directed to be deleted. The Petition accordingly is partly allowed and disposed of.

4. Rule accordingly made partly absolute. No order as to costs.

(V.G.PALSHIKAR, J.)

(SMT.NISHITA MHATRE, J.)